

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ JUL 21 2010

P.M. _____
TIME A.M. _____

-----X
JEFFREY BENJAMIN,

Plaintiff,

REPORT & RECOMMENDATION
10 CV 133 (DLI)(LB)

- against -

AFNI, INC.,

Defendant.

-----X
BLOOM, United States Magistrate Judge:

Plaintiff filed the instant pro se action on January 13, 2010 against the above defendant. The Court's records do not reflect that plaintiff has filed proof that defendant has been served with the summons and complaint. Rule 4(m) of the Federal Rules of Civil Procedure provides:

If a defendant is not served within 120 days after the complaint is filed, the court--on motion or on its own after notice to the plaintiff--must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

By Order dated February 5, 2010, I directed plaintiff to serve defendant with the summons and complaint by May 13, 2010. (Document 2.) The Court's Order explicitly stated "if service is not made upon defendant by May 13, 2010 or plaintiff fails to show good cause why such service has not been effected, it will be recommended that the Court dismiss this action without prejudice." (*Id.*) Plaintiff has failed to file proof of service or show good cause why service has not been made on defendant. Accordingly, it is respectfully recommended that plaintiff's complaint should be dismissed without prejudice pursuant to Rule 4(m) of the Federal Rules of Civil Procedure.

clm

FILING OF OBJECTIONS TO THIS REPORT AND RECOMMENDATION

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties shall have fourteen (14) days from service of this Report to file written objections. Such objections (and any responses to objections) shall be filed with the Clerk of the Court. Any request for an extension of time to file objections must be made within the fourteen-day period. Failure to file a timely objection to this Report generally waives any further judicial review. Marcella v. Capital Dist. Physician's Health Plan, Inc., 293 F.3d 42 (2d Cir. 2002); Small v. Sec'y of Health and Human Services, 892 F.2d 15 (2d Cir. 1989); see Thomas v. Arn, 474 U.S. 140 (1985).

LOIS BLOOM

United States Magistrate Judge

Dated: July 20, 2010
Brooklyn, New York